IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 911 OF 2004

1.Shivkrupa Sizere, Ichalkaranji; and
2.Shri Rameshwarlal Narsinglal Purohit. ... Appellants

V/s

New Mangalam Sizere, Ichalkaranji. ... Respondent.

Shri M. B. Jadhav for the appellants.

Shri A. A. Garge for the respondent.

CORAM: P.V. KAKADE, J.

DATED : 10TH OCT., 2004

P.C.:

1. By order dated 13.9.2004, by agreement of the parties, the matter has been taken up for final hearing at the stage of admission.

2. Hence, Rule. Rule made returnable forthwith by consent.

3. The appellants defendants have preferred this appeal against the judgment and order passed by the Civil Judge, Sr. Divn., Kolhapur, dated 19.6.2003 partly decreeing the suit with proportionate cost against the defendants directing them to pay the amount of Rs.1,61,540/-

together with interest at the rate of 6% p. a. from the date of the suit till realization.

4. The plaintiff filed the suit for recovery of the amount of Rs.1,60,000/- allegedly advanced to the defendants as a hand loan. The plaintiff further sought recovery of sum of Rs.51,700/- towards 18% interest on the principal amount for pre-suit period. The plaintiff is a resident of Ichalkaranji. He has been dealing in sizing business. The defendant No.1 is a proprietary concern also dealing in sizing business. Second defendant is the proprietor of the first defendant. Plaintiff and defendants are acquainted to each other. They had business transaction. The defendants used to be in need of finance for his business. On the request of the defendants, plaintiff advanced a worth of Rs.1,60,000/- by five cheques. It is submitted that the said payment was made during the period from 29.4.1997 to 10.12.1998. The defendant was requested to pay the amount but he avoided to do so on one aspect or the other. Hence the notice was issued and it was not complied with and hence the suit.

5. The defendants by their written statement disputed the plaintiff's claim. They denied the status of the proprietor of New Mangalam Sizers. The defendants have

come with the theory that they had leased their sizing unit to the plaintiff at the monthly rent of Rs. 5000/-. The lease commenced from January, 1997. There was some quarrel relating to sizing business. The same was sold to the plaintiff for Rs.1,56,181/-. The payment was made by the plaintiff by five cheques on account of such material and some dispute arose between the parties. Then the memorandum of understanding was arrived at. According to the defendants, the plaintiff was to purchase sizing machinery for a sum of Rs.3,50,000/-. It was averred that the plaintiff did not act according to the understanding and, therefore, the defendants had surrendered the sizing unit to the plaintiff and since then the plaintiff has been on unfriendly term with the defendants and hence the suit is filed which is sought to be dismissed with costs.

6. The Trial Judge raised issues on the basis of the pleadings and held that the plaintiff had proved that he had advanced a sum of Rs.1,60,000/- as hand loan. It was also held that the plaintiff had locus to file the present suit, however, it was held that the plaintiff was not entitled to the interest at the rate of 18% p.a. for pre-suit period and, as such, the suit came to be decreed partly. Hence the present appeal.

7. I have heard the learned counsel for both parties.

Perused the record.

8. From the entire pleadings as well as the evidence on record, following issues emerged for consideration :-

(1) Whether the plaintiff has proved that he has advanced a sum of Rs.1,60,000/- to the defendants as hand-loan ?

(2) Whether the plaintiff's suit in its present form is maintainable ?

(3) Whether the plaintiff is entitled to the interest at the rate of 18% p.a. ?

(4) What order ?

My findings on the above issues are :-

Issue No.1 :- Affirmative.

Issue No.2 :- Affirmative.

Issue No.3 :- Negative.

Issue No.4 :- As per final order.

9. At the outset, it may be noted that it is the case of

the plaintiff that he paid the amount of Rs.1,60,000/- as hand-loan by five cheques. In his evidence he has stated about the good relation with the defendants and in view of the business dealings between the parties, he advanced the said amount. The amount of Rs.75,000/- was paid by Cheque No.178948. Thereafter he gave further cheques of Rs.70,000/- and Rs.15,000/- on different occasions and due entries were made in the books of accounts of the plaintiff which are produced on record. As against this, the defendants led their evidence of witness Rameshwarlal Narsinglal Purohit, proprietor of the defendant No.1 concern. He has admitted that he received a sum of Rs.1,60,000/-, however, according to him, the payment was on account of the dues from the plaintiff towards cost of sizing material and three months' rent in support of his claim. His evidence further shows that the said material was sold to the plaintiff for a sum of Rs.1,56,101/-. The document of understanding was also arrived at and it is evident there from that the plaintiff was to purchase the sizing unit for Rs.3,50,000/-. The defendants put their case to the plaintiff in his cross-examination from which it has emerged that he did not obtain the post-dated cheque from the defendants to secure repayment of the loan advanced nor did he obtain any receipt showing the loan was advanced. The sizing unit is also admitted to have been taken on lease by the plaintiff. He used to run the

said unit for a period of two years commencing 1.1.1997 and have admitted to have purchased the sizing material from the defendants. Cross-examination of the defendants' witness revealed that he had maintained books of accounts but in one breath the defendants' witness admitted to have received a sum of Rs.1,58,100/- from the plaintiff of rent from the plaintiff during the year 1996-1997 and immediately he admits to have not claimed the arrears of rent from the plaintiff.

10. Perusal of the entire evidence shows that the plaintiff had advanced a sum of Rs.1,60,000/- to the defendants as hand-loan. Receipt of the amount is not in dispute. The case of the defendants that the said amount was paid towards the cost of sizing unit and three months' rent could not be substantiated by any evidence. The defendants' witness in his cross-examination has also admitted that he had maintained books of accounts but curiously enough those have not been produced for the reasons best knwn to the defendants. Moreover, the case of the plaintiff is corroborated by these books of accounts including the cash book (Exh.44) which bear the entry of having paid the amount of Rs.75,000/- and Rs.70,000/- to the defendants by cheques. Another cash book (Exh.45) shows entries in relation to the payment of Rs.15,000/- by three cheques of Rs.5,000/- each. These

account book entries substantiate the plaintiff's claim in this regard. In view of this position, I counter with the findings recorded by the learned Trial Judge that the plaintiff has proved the case that he has advanced hand-loan of Rs.1,60,000/- to the defendants whic has not been repaid. The theory sought to be introduced on behalf of the defendants is that it is the independent transaction between the parties which is not related to the suit transaction.

11. So far as the locus of the plaintiff to file the suit is concerned, it is not curiously challenged and, therefore, there is no need of elaborate discussion on the point and I accept the findings recorded by the learned Trial Judge.

12. So far as the demand of the interest at the rate of 18% p.a. on principal amount made by the plaintiff is concerned, I fully agree with the learned Trial Judge when he holds that there is no concurrent evidence to show when the first payment was made and the amount was to be repaid. Therefore, rejection of interest at the rate of 18% p.a. is also required to be confirmed.

13. For the reasons recorded above, I hold that the learned Trial Judge has appreciated the evidence on record

in just, proper and correct manner and, therefore, it would brook no interference.

In the result, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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